

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-09)

Approved for use through 07/31/2012. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 3372-0108P																	
	Application Number 09/960,351-Conf. #6239	Filed September 24, 2001																	
	First Named Inventor Anders LINDBERG																		
	Art Unit 2623	Examiner A. Q. Shang																	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table><tr><td><input type="checkbox"/></td><td>applicant /inventor.</td><td><u>Penny Caudle #46,607</u></td><td>Signature</td></tr><tr><td><input type="checkbox"/></td><td>assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td><u>Chad J. Billings</u></td><td>Typed or printed name</td></tr><tr><td><input checked="" type="checkbox"/></td><td>attorney or agent of record. Registration number <u>48,917</u></td><td><u>(703) 205-8000</u></td><td>Telephone number</td></tr><tr><td><input type="checkbox"/></td><td>attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</td><td><u>September 17, 2009</u></td><td>Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>				<input type="checkbox"/>	applicant /inventor.	<u>Penny Caudle #46,607</u>	Signature	<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>Chad J. Billings</u>	Typed or printed name	<input checked="" type="checkbox"/>	attorney or agent of record. Registration number <u>48,917</u>	<u>(703) 205-8000</u>	Telephone number	<input type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____	<u>September 17, 2009</u>	Date
<input type="checkbox"/>	applicant /inventor.	<u>Penny Caudle #46,607</u>	Signature																
<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>Chad J. Billings</u>	Typed or printed name																
<input checked="" type="checkbox"/>	attorney or agent of record. Registration number <u>48,917</u>	<u>(703) 205-8000</u>	Telephone number																
<input type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____	<u>September 17, 2009</u>	Date																

ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REVIEW

Claims 1-37 are currently pending, wherein claims 1 and 30 are independent. Favorable reconsideration is respectfully requested in view of the remarks presented herein below.

In paragraph 4 of the Office action ("Action"), the Examiner rejects claims 1-37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,671,219 to Jensen et al. ("Jensen"). Applicant respectfully traverses this rejection.

In order to support a rejection under 35 U.S.C. § 103, the Examiner must establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness three criteria must be met. First, there must be some rationale to combine the cited references. Second, there must be a reasonable expectation of success. Finally, the combination must teach each and every claimed element. In the present case, claims 1-37 are patentable over Jensen for at least the reason that Jensen fails to disclose each and every claimed element. Nowhere in Jensen is there any disclosure or suggestion of a method of test receiving alternative reception frequencies as claimed. More specifically, Jensen fails to disclose or suggest (1) predicting an interruption in the form of a natural break in the transmitted flow of specific user terminating information based on an indication of the end of a cluster of the specific user terminating information, where the indication of the end of the cluster is part of the specific user terminating information; and (2) evaluating the interruption to determine whether it will be of an adequate length of time as recited in claim 1.

In rejecting claim 1, the Examiner asserts that Jensen discloses "predicting an interruption in the form of a natural break" as recited in claim 1 in as much as Jensen discloses monitoring packets of information retrieved by the receiver and switching to available channels (stored in advance) upon interruption due to various natural interruptions, such as low signal quality, severe signal blockage, of the current channel in use. Although, as pointed out by the Examiner, Jensen discloses monitoring received packets and switching or initiating a handoff when the received signal quality is below a predetermined threshold, the Examiner's conclusion/assertion that this handoff of Jensen

is equivalent to “predicting an interruption in the form a natural break...based on an indication of the end of a cluster...” as claimed is unfounded.

First, while low signal quality, signal blockage, and/or signal interference may be consisted natural breaks in the *received* signal flow, they are NOT natural breaks in the *transmitted* flow of specific user terminating information as claimed. It is commonly understood that the action of “transmitting” (in the context of radio communication) is performed by a “transmitter”. A transmitter is further commonly understood to be an electronic device which, usually with the aid of an antenna, propagates an electromagnetic signal such as radio, television, or other telecommunications. A transmitter usually comprises a power supply, an oscillator, a modulator, and amplifiers for radio frequency (RF). The modulator is the device which modulates the signal information onto the carrier frequency, which is then broadcast. Sometimes also the antenna connected to the transmitter is consider to take part in the action of “transmitting” (c.f. the term “transmitting antenna”). It is quite clear that the act of “transmitting” is completed at the point where the signal leaves the antenna connected to the transmitter. Thus the natural breaks referred to in Jensen are natural breaks in the *received* signal, not the *transmitted* signal as claimed.

Second, even if the interruptions of Jensen where considered to be part of the *transmitted* flow, nowhere in Jensen is there any disclosure or suggestion of predicting the interruptions based on an indication of the end of a cluster of the specific user terminating information, where the indication of the end of the cluster is *part of* the specific user terminating information as claimed. The Examiner asserts that the packets of Jensen are equivalent to the claimed cluster and the link quality dropping below a measurement threshold is equivalent to the claimed indication of the end. However even if the packets of Jensen where clusters, in the claimed invention the “indication of the end” is part of the “specific user terminating information” (i.e. is created by the transmitting side and carried as explicit information in the transmitted signal), whereas according to the Examiner’s interpretation of Jensen the “indication of the end” corresponds to when “the overall link quality drops below a measured threshold”. In the previous case the “indication of the end” consists of information intentionally transferred from a transmitting side to a receiving side. In the latter case it consists of circumstances

during the signal transfer and reception that is not under control of the transmitting side and can not be consider to be "desired by" the receiver. Accordingly, the overall link quality is not part of the specific user terminating information as claimed.

Finally, nowhere in Jensen is there any disclosure or suggestion of evaluating the interruption to determine whether it will be of an adequate length of time. To the contrary, Jensen at best discloses that the interruptions result in a signal level below a predetermined threshold. Therefore, Jensen merely discloses evaluating the overall link quality, not the length of time of the interruption as claimed.

For at least those reasons presented above, claim 1 is patentable over Jensen for at least the reason that Jensen fails to disclose or suggest each and every claimed element.

Independent claim 30 defines an receiver including, *inter alia*, a digital signal processing unit configured to carry out the method of claim 1. Therefore, claim 30 is patentable over Jensen for a least those reasons presented above with respect to claim 1.

Claims 2-29 and 31-37 variously depend from independent claims 1 and 30. Therefore, claims 2-29 and 31-37 are patentable over Jensen for at least those reasons presented above with respect to claims 1 and 30. Reconsideration and withdrawal of the rejection of claims 1-37 under 35 U.S.C. § 103 is respectfully requested.